

REMARKS¹

In the Final Office Action, the Examiner took the following actions:

1) rejected claims 27, 28, 32, 42, and 46 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,666,293 to Metz ("*Metz*") in view of U.S. Patent No. 6,230,319 to Britt ("*Britt*").

By this amendment, Applicants propose to amend claims 27 and 42 and cancel claims 33-41 and 47-52. Claims 27, 28, 32, 42, and 46 remain pending in this application.

I Claim Rejections Under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 27, 28, 32, 42, and 46 under 35 U.S.C. § 103(a). No *prima facie* case of obviousness has been established.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. MPEP § 2142, 8th Ed., Rev. 6 (Sept. 2007). "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." MPEP § 2145. Furthermore, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. MPEP § 2143.01(III), internal citation omitted. Moreover, "[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have

¹ The Office Action contains statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

been obvious, but whether the claimed invention as a whole would have been obvious.” MPEP § 2141.02(I), internal citations omitted (emphasis in original).

“[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. § 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” MPEP § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” MPEP § 2141(III). In this application, a *prima facie* case of obviousness has not been established because the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the claimed invention and the prior art. Accordingly, the Office Action has failed to clearly articulate a reason why the prior art would have rendered the claimed invention obvious to one of ordinary skill in the art.

A. Claim 27

Claim 27, if amended as proposed herein, would recite a combination including “...checking whether or not a value stored in the first domain is the predetermined number and... [the] predetermined number indicating that the control program which had been stored in the second domain has been deleted, and that a new control program is being downloaded.” *Metz* fails to disclose or suggest at least this feature.

As the Applicants argued previously and as the Examiner agrees on page 2 of the Office Action, *Metz* does not teach or suggest at least “[storing]...a predetermined number when the download procedure for updating the control program in the second domain was suspended due to a signal transmission error.” For at least the reason that

Metz does not teach or suggest this, *Metz* also fails to teach or suggest “restarting the downloading program stored in the non-volatile random access memory and updating the predetermined number, indicating that the control program which had been stored in the second domain is deleted, and that a new control program has been downloaded” (Emphasis added).

Britt fails to cure the deficiencies of *Metz*. *Britt* also fails to disclose or suggest a combination including “restarting the downloading program stored in the non-volatile random access memory and updating the predetermined number, indicating that the control program which had been stored in the second domain is deleted, and that a new control program has been downloaded” as would be recited in amended claim 27. Further, the “NO PWR FLAG”, to the extent that it can reasonably be considered to correspond to Applicants’ claimed “predetermined number,” of *Britt* does not indicate deletion of control program and download of new program. *Britt* thus cannot cure the deficiencies of *Metz*.

The Examiner states that the claimed feature of the Applicants’ invention, the “predetermined number,” is met by the “NO PWR FLAG” disclosed in *Britt*. Office Action at 2. In *Britt*, the power flag is repeatedly checked during a downloading process, and the “NO PWR FLAG” is set when any loss of power is detected. Contrary to this, the claimed “predetermined number” recited in Applicants’ claims, which may be a value indicating the state that the control program pre-stored in the flash memory is deleted and rather a new control program is downloaded, is written at a time point when the downloading is started. In summary, the “NO PWR FLAG” of *Britt* is set when the power loss is detected, whereas the claimed “predetermined number” may be set at the time point when the downloading is initiated. Therefore, the claimed “predetermined

number” and the “NO PWR FLAG” of *Britt* are different from each other in their set states. Hence, *Britt* provides no disclosure as to “...checking whether or not a value stored in the first domain is the predetermined number and... [the] predetermined number indicating that the control program which had been stored in the non-volatile random access memory has been deleted, and that a new control program is being downloaded” as would be recited in amended claim 27.

Accordingly, the elements that would be recited in amended claim 27 are neither taught nor suggested by the applied references. Nor has the Examiner explained how teachings of the references could be modified to achieve the claimed invention. Consequently, the Office Action has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the claimed invention. Accordingly, no reason has been clearly articulated as to why the claim would have been obvious to one of ordinary skill in the art in view of the prior art. Therefore, a *prima facie* case of obviousness has not been established for claim 27.

For at least the reasons above, amended claim 27 is allowable. Accordingly, Applicants respectfully request that the Examiner enter the amendments to claim 27 and withdraw the rejection of claim 27 under 35 U.S.C. § 103(a).

If an independent claim is nonobvious under 35 U.S.C. § 103(a), then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988). Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of dependent claims 28 and 32 under 35 U.S.C. § 103(a).

B. Claim 42

Independent claim 42 also recites a combination including the “predetermined number...wherein the predetermined number is updated to indicate that the control

program which has been stored in the non-volatile random access memory has been deleted and the new control program is being downloaded.” Therefore, amended claim 42 should be allowable over *Metz* in view of *Britt* for at least the same reasons as stated above for claim 27. Accordingly, Applicants respectfully request that the Examiner enter the amendments to claim 42 and withdraw the rejection of claim 42 under 35 U.S.C. § 103(a).

If an independent claim is nonobvious under 35 U.S.C. § 103(a), then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988). Accordingly, Applicants’ respectfully request that the Examiner withdraw the rejection of dependent claim 46 under 35 U.S.C. § 103(a).

II. Conclusion

Applicants respectfully requests that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 27, 28, 32, 42, and 46 in condition for allowance.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Darrell D. Kinder, Jr.
Darrell D. Kinder, Jr.

Dated: May 7, 2008

By: *Reg. No. 57,460*

For Andrew C. Sonu
Reg. No. 33,457
(202) 408-4000